IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

ORDER

Iqbal Ahmad Vs. Smt. Jannat & Anr.

S.B.CR. MISC. PETITION NO. 1160/2006.

Under Sec.482 Cr.P.C. against the order dated 2.8.2005 passed by Additional Chief Judicial Magistrate No.2, Bikaner in Cr. Misc. Case No. 121A/2005.

Date of Order: September 12, 2006.

PRESENT

HON'BLE MR JUSTICE H.R.PANWAR

Mr MS Purohit, for the petitioner.

BY THE COURT:

By the instant Cr. Misc. Petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 2st August, 2005 passed by Additional Chief Judicial Magistrate No.2, Bikaner (for short `the trial Court' hereinafter) whereby the trial Court granted monthly allowance of interim maintenance in favour of non petitioners during the pendency of application filed by non petitioner under Section 125 Cr.P.C.

I have heard the learned counsel for the petitioner and carefully gone through the order impugned.

It is contended by learned counsel for the petitioner that petitioner has divorced the non petitioner. It is further contended that non petitioner No.1 has attained the majority. From the order impugned, it appears that interim maintenance has been granted on the pleadings of the parties and there is a specific pleading of non petitioner that she is legally wedded wife of petitioner and petitioner No.2, his son born out of the wedlock and petitioner despite having sufficient means, neglected her.

The learned trial Court granted monthly allowance of interim maintenance of Rs. 1200/- in favour of non petitioner No.1 and at the rate of Rs. 600/- in favour of non petitioner No.2. Learned counsel submits that petitioner is a Constable in Police Department and his salary is Rs. 7,500/-.

Be that as it may, even assuming the salary as stated by the petitioner to be correct, then also the amount of Rs. 1800/- awarded for two persons as monthly allowance of interim maintenance cannot be said to be erroneous in any manner. So far as the question as regards divorce and non petitioner No.2 having attained the majority are concerned, these questions are

to be decided on evidence when the parties led evidence. So far awarding interim maintenance is concerned, no evidence is required to be led by either party.

In the circumstances, therefore, it cannot be said that the order impugned would result in serious miscarriage of justice or the order impugned is illegal or perverse. It is for the petitioner to establish by leading evidence that he has divorced the non petitioner in accordance with Muslim Law as also that non petitioner No.2 has attained the majority. If such evidence is led, it will be open for the trial Court to consider and decide the same while deciding the main application under Sec.125 Cr.P.C.

The petition is, therefore, dismissed. Stay petition also stands dismissed. The trial Court is directed to dispose of the main application filed by the non petitioner under Section 125 Cr.P.C. preferably within four months from the date of receipt of a copy of this order.

(H.R.PANWAR),J.

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